

TEXAS ETHICS COMMISSION

IN THE MATTER OF

RICARDO RODRIGUEZ, JR.,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31112263

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on June 6, 2012, to consider sworn complaint SC-31112263. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.035(h), 254.031, and 254.0611 of the Election Code and section 20.61 of the Ethics Commission Rules, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

The complaint alleged that the respondent: 1) accepted political contributions from corporations or labor organizations; 2) did not properly disclose total political contributions maintained; 3) did not disclose complete principal occupation and employer information for 35 contributors; 4) did not disclose a complete street address for 12 persons to whom political expenditures were made; 5) did not disclose the full name of three persons to whom political expenditures were made; 6) did not properly disclose the purpose of four political expenditures; 7) did not properly disclose 12 political expenditures made as reimbursements; and 8) did not properly disclose loans and outstanding loan balances in four semiannual campaign finance reports.

III. Facts Supported by Credible Evidence

Credible evidence available to the commission supports the following findings of fact:

1. The respondent has served as the judge for the 92nd Judicial District since he was elected on November 7, 2006.

Political Contributions from Corporations or Labor Unions

2. The complaint alleged that, based on disclosures in the respondent's July 2011 semiannual report, the respondent accepted two political contributions totaling \$3,000 from corporations or labor organizations.
3. The contributions as disclosed, and whether the evidence (based on public records) shows that the source of the contribution is a corporation or labor organization, are as follows:
 - June 13, 2011, \$500, Rivera Funeral Home L.L.C. – domestic limited liability company organized under the Texas Business Organizations Code
 - June 16, 2011, \$2,500, Stoneridge Physical Rehabilitation Center – domestic for-profit corporation
4. In response to the complaint, the respondent swore that he did not knowingly accept the contributions and that he immediately refunded the contributions as soon as the issue was brought to his attention. The respondent provided a copy of two checks drawn from his campaign account that show refunds for the amounts at issue were made on December 9, 2011, which was four days after the complaint was filed. The respondent also disclosed the returned contributions to each respective entity on Schedule F (used to disclose political expenditures) of his January 2012 semiannual report.

Total Political Contributions Maintained

5. The complaint alleged that the respondent did not properly disclose total political contributions maintained in his July 2011 semiannual report.
6. The respondent's July 2011 semiannual report disclosed \$80,305.07 in total political contributions maintained. The complaint alleged that the total political contributions maintained should be \$81,349.32. The difference between the amount disclosed and the amount alleged is \$1,044.25.

Contributor Principal Occupation and Employer

7. The complaint alleged that the respondent did not properly disclose complete principal occupation and employer information for 35 contributors in his July 2011 semiannual report.
8. For nine of the contributions totaling \$8,330, the respondent listed the contributors as self-employed businessmen when they were either owners or employees of entities that did not contain the contributors' names in the business title. Accordingly, the information disclosed by the respondent does not make clear the identity of the contributors' employers.

9. For three of the contributions totaling \$2,500, the respondent listed the contributors' principal occupation and job title as "Attorney at Law" and listed the contributors' employer as "Law Firm." However, the evidence indicated that the contributors were attorneys employed by a law firm at the time the contributions were made, and the law firms did not bear the contributors' names. Accordingly, the information disclosed by the respondent does not make clear the identity of the contributors' employers.
10. For 19 of the contributions totaling approximately \$16,000, the respondent listed the contributors' principal occupation and job title as "Attorney at Law" and listed the contributors' employer as "Law Firm." The evidence indicated that the contributors are all attorneys who are either sole practitioners or owners of small law firms operated as professional corporations or limited liability partnerships. Moreover, credible evidence indicated that the contributors' names were included in the names of each respective law firm.
11. For four of the contributions, the respondent listed the contributors' principal occupation and job title as "Businessman" and listed the contributors' employer as "Self-Employed." The evidence indicated that the contributors were either self-employed or were officers or principals of entities that contained their names in the business title at the time the contributions were made. Thus, the identity of each contributor's employer was readily ascertainable.

Disclosure of Political Expenditures

Payee Address

12. The complaint alleged that in the January 2010 semiannual report, the respondent did not include a street address for five payees who received political expenditures totaling \$1,850. The respondent corrected the report. Based on the corrected report and the information submitted in response to the complaint, the city, state, and zip code information was incorrect as originally reported.
13. The complaint also alleged that in the July 2011 semiannual report, the respondent did not include a street address for seven payees who received political expenditures totaling \$599.50. The respondent corrected the report. Based on the corrected report and the information submitted in response to the complaint, the city, state, and zip code information was incorrect as originally reported.

Payee Name

14. The complaint alleged that the respondent did not properly disclose in the January 2010 semiannual report the full name of three payees of political expenditures. The political expenditures at issue were disclosed on Schedule F of the January 2010 semiannual report as follows:
 - July 21, 2009, \$300 to RGV TASO for "Sponsorship RGV Golf Tournament"

- July 29, 2009, \$100 to South Texas KAVS for “Donation for Softball Tournament”
 - November 27, 2009, \$1,494.90 to H.E.B. Grocery for “Thanksgiving Turkeys for Needy Families”
15. Regarding the expenditure to RGV TASO, the acronym is commonly used as the name of the organization.
16. Regarding the expenditure to South Texas KAVS, an Internet search using the term “South Texas KAVS softball” returned a match for the South Texas KAOS Gold softball team. The evidence indicated that the payee’s name was misspelled when the report was filed. In context, the error was not misleading and did not substantially affect disclosure.
17. Regarding the expenditure to H.E.B. Grocery, the evidence indicated that the respondent purchased turkeys to give away to needy families for Thanksgiving. The complaint alleged that the respondent was required to list the ultimate recipients of each turkey as the payee of a political expenditure. Note that there is no evidence that any person who received a turkey was a payee of political expenditures that exceeded \$50 (\$100 as of September 28, 2011) during the reporting period.

Purpose of Political Expenditures

18. The complaint alleged that the respondent did not properly disclose the purpose of four political expenditures totaling approximately \$320 that were disclosed on Schedule G (used to disclose political expenditures made from personal funds) of the respondent’s July 2011 semiannual campaign finance report.
19. The political expenditures at issue were made to grocery stores and were disclosed under the category of “Contributions/Donations Made by Candidate” with descriptions of “Election Day Sponsorship” and “Local Election Day Sponsorship.” Accordingly, the information as disclosed by the respondent did not indicate what specific goods or services were purchased.

Actual Payees of Political Expenditures

20. The complaint alleged that the respondent did not disclose the actual vendor payee, address, date, and amount pertaining to the stated purpose of a political expenditure in his January 2010 semiannual report and July 2011 semiannual report.
21. Regarding the January 2010 semiannual report, the respondent disclosed six political expenditures totaling approximately \$4,050 that were alleged to have been made as reimbursements. Three of the six political expenditures totaling approximately \$785 were made directly to the respondent as reimbursements for political expenditures he previously made from his personal funds (one of the expenditures was for \$30).

However, the respondent did not disclose the actual vendor payees in the original report, and the descriptions do not make clear who the ultimate vendors were. The respondent subsequently corrected the report to add Schedule G to show the original payees of the expenditures (two expenditures exceeded \$50; one did not). The remaining three political expenditures totaling \$1,020 were made to three different individuals. The complaint included no evidence to show that the individuals were not the actual recipients of the political expenditures. The evidence indicated that one of the expenditures of \$600 was for contract labor and campaign services rendered. The other two political expenditures totaling \$420 were made to individuals in their capacity as event hosts and sponsors of charity fundraising events. The individuals at issue were not staff members of the respondent.

22. Regarding the July 2011 semiannual report, the respondent disclosed six political expenditures totaling approximately \$1,225 that were made to six different individuals. The evidence indicated that the political expenditures at issue were made to individuals in their capacity as event hosts and sponsors of charity fundraising events. The individuals at issue were not staff members of the respondent.

Disclosure of Loans

23. The complaint alleged that the respondent disclosed incorrect amounts of total outstanding loans on his July 2010, January 2011, and July 2011 semiannual reports. The complaint also alleged that the respondent did not file a Schedule L (used to disclose outstanding loans) with his January 2010 semiannual report.
24. The respondent originally reported a loan of approximately \$299,340 in his July 2007 semiannual report. However, the respondent did not file a Schedule E (used to disclose loans) with the report, and the loan only disclosed on the line for reporting the total principal amount of all outstanding loans. The respondent's January 2008 semiannual report showed a \$150,000 loan repayment made to First National Bank and disclosed an outstanding loan balance of approximately \$140,500. The report also contained a Schedule L that listed First National Bank as the lender. The respondent's January 2009 semiannual report showed two loan repayments totaling approximately \$53,115 and disclosed an outstanding loan balance of \$100,000.
25. The respondent's July 2010 semiannual report disclosed \$102,670 in total outstanding loans. The complaint alleged that the total amount of all outstanding loans should be \$100,000.
26. The respondent's January 2011 semiannual report disclosed \$102,670 in total outstanding loans. The complaint alleged that the total amount of all outstanding loans should be \$100,000.
27. The respondent's July 2011 semiannual report disclosed \$70,468.53 in total outstanding loans. The complaint alleged that the total amount of all outstanding loans should be

\$55,000. This allegation was based on the fact that the respondent reported a \$45,000 loan repayment on Schedule F of the report.

28. In response to the complaint, the respondent corrected the reports at issue to reflect the balances that were alleged in the complaint. The evidence indicated that the respondent erroneously added the interest when calculating the total principal amount of outstanding loans, as opposed to reporting only the amount of principal. Accordingly, the amounts disclosed in the original reports were incorrect.
29. With respect to the allegation that the respondent did not file a Schedule L with his January 2010 semiannual report, the report contained a Schedule L but indicated that the name of the lender was Ricardo Rodriguez, Jr. The respondent subsequently corrected the report to include the name of the actual lender, First National Bank.

IV. Findings and Conclusions of Law

The facts described in Section III support the following findings and conclusions of law:

Political Contributions from Corporations or Labor Unions

1. A person may not knowingly accept a political contribution that the person knows was made in violation of chapter 253 of the Election Code. ELEC. CODE § 253.003.
2. A corporation may not make a political contribution or political expenditure that is not authorized by subchapter D, chapter 253, Election Code. ELEC. CODE § 253.094.
3. The prohibition applies to corporations that are organized under the Texas Business Corporation Act, the Texas For-Profit Corporation Law, the Texas Non-Profit Corporation Act, the Texas Nonprofit Corporation Law, federal law, or law of another state or nation. ELEC. CODE § 253.091.
4. A Texas limited liability company is subject to the restrictions in Election Code chapter 253, subchapter D, if it engages in a type of business listed in Election Code section 253.093 or if it is owned, in whole or in part, by an entity subject to the restrictions in Election Code chapter 253, subchapter D. Ethics Advisory Opinion No. 383 (1997).
5. Regarding the contribution from Rivera Funeral Home, credible evidence indicates that the contribution was not made by a prohibited corporation or labor organization. Therefore, there is credible evidence of no violation of sections 253.003 and 253.094 of the Election Code with respect to that contribution.
6. Regarding the contribution from Stoneridge Physical Rehabilitation Center, credible evidence indicates that the contribution was made by a prohibited corporation. There is insufficient evidence to show that the respondent knew the particular contribution at issue was from a corporation or labor organization at the time he accepted it. Therefore, there

is insufficient evidence of a violation of sections 253.003 and 253.094 of the Election Code with respect to that contribution.

Total Political Contributions Maintained

7. Each report must include as of the last day of the reporting period, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period. ELEC. CODE § 254.031(a)(8). A *de minimis* error in calculating or reporting a cash balance under Subsection (a)(8) is not a violation of this section. ELEC. CODE § 254.031(a-1).
8. With respect to the respondent's July 2011 semiannual report, the difference between the amount originally disclosed and the amount alleged does not exceed the lesser of 10% of the amount originally disclosed or \$2,500 and, thus, is on its face *de minimis*. Therefore, there is credible evidence of no violation of section 254.031(a)(8) of the Election Code.

Contributor Principal Occupation and Employer

9. Each report by a candidate for a judicial office must include, for each individual from whom the person filing the report has accepted political contributions that in the aggregate exceed \$50 and that are accepted during the reporting period, the principal occupation and job title of the individual and the full name of the employer of the individual or of the law firm of which the individual or the individual's spouse is a member, if any. ELEC. CODE § 254.0611(a)(2)(A). "Law firm" means a partnership, limited liability partnership, or professional corporation organized for the practice of law. *Id.* § 253.157(e).
10. Black's Law Dictionary defines "employer" as "a person who controls and directs a worker under an express or implied contract of hire and who pays the worker's salary or wages." Black's Law Dictionary 565 (8th ed. 2004).
11. For 12 of the contributions at issue totaling \$10,830, the respondent did not provide sufficient information regarding the contributors' employer or law firm. The law firms and businesses were not identified in the respondent's report, and the entities did not bear the contributors' names. Therefore, there is credible evidence of violations of section 254.0611(a)(2)(A) of the Election Code with respect to those 12 contributions.
12. For 19 of the contributions at issue totaling approximately \$16,000, the evidence indicated that the contributors were either sole practitioners or owners of small law firms operated as professional corporations or limited liability partnerships, and that the contributors' names were included in the names of each respective law firm. Although the contributors were not identified as self-employed, and the respondent did not list the formal name of each law firm, the information was not misleading and did not substantially affect disclosure. Therefore, there is credible evidence of technical or *de minimis* violations of section 254.0611(a)(2)(A) of the Election Code with respect to those 19 contributions.

13. For four of the contributions, the respondent listed the contributors' principal occupation and job title as "Businessman" and listed the contributors' employer as "Self-Employed." The commission has previously determined that there is no violation of section 254.0611(a)(2)(A) of the Election Code for listing a contributor as self-employed as long as the contributor is an officer or principal of an entity that bears the contributor's name, or if the contributor is otherwise self-employed. Credible evidence indicated that the contributors at issue are officers or principals of entities, and that the contributors' names were included in the names of each respective entity. Therefore, there is credible evidence of no violations of section 254.0611(a)(2)(A) of the Election Code with respect to those four contributions.

Disclosure of Political Expenditures

14. A campaign finance report must include the amount of political expenditures that in the aggregate exceed \$100 (\$50 until September 28, 2011) and that are made during the reporting period, the full name and address of the persons to whom political expenditures are made, and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
15. An expenditure means a payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment. *Id.* § 251.001(6). A political expenditure means a campaign expenditure or an officeholder expenditure. *Id.* § 251.001(10).

Payee Address

16. The respondent did not provide correct address information for all 12 payees at issue when the January 2010 and July 2011 semiannual reports were originally filed. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code.

Payee Name

17. The name of an entity that is required to be included in the name of the committee may be a commonly recognized acronym by which the entity is known. ELEC. CODE § 252.003(d).
18. Regarding the expenditure to RGV TASO, since the acronym is commonly used as the name of the payee, the disclosure substantially complies. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code with respect to that expenditure.
19. Regarding the expenditure to South Texas KAVS, the respondent did not properly disclose the name of the softball team because he misspelled the name. However, the error was not misleading and did not substantially affect disclosure. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.031(a)(3) of the Election code with respect to that expenditure.

20. Regarding the expenditure to H.E.B. Grocery, credible evidence indicated that the political expenditure was made to purchase turkeys for needy families. The complaint alleges that the respondent was required to disclose the recipients of the turkeys as the payees of the political expenditure. Although the respondent subsequently gave the turkeys away as gifts, even if such a gift could be considered a payment or political expenditure, there is no evidence that any person who received a turkey was a payee of a political expenditure that exceeded \$50 (\$100 as of September 28, 2011). The initial recipient of the payment at issue was properly disclosed. There is credible evidence of no violation of section 254.031(a)(3) of the Election Code with respect to that expenditure.

Purpose of Political Expenditures

21. The purpose of an expenditure means a description of goods, services, or other thing of value and must include a brief statement or description of the candidate, officeholder, or political committee activity that is conducted by making the expenditure. The brief statement or description must include the item or service purchased and must be sufficiently specific, when considered within the context of the description of the category, to make the reason for the expenditure clear. Merely disclosing the category of goods, services, or other thing of value for which the expenditure is made does not adequately describe the purpose of an expenditure. Ethics Commission Rules § 20.61.
22. Regarding the political expenditures at issue, the categories and descriptions provided by the respondent do not make clear what goods or services the respondent purchased. Moreover, the category of “Food/Beverage Expense” would have been the more appropriate category to use than “Contributions/Donations Made By Candidate.” Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code and section 20.61 of the Ethics Commission Rules with respect to the four political expenditures at issue.

Actual Payees of Political Expenditures

23. A candidate who makes political expenditures from the candidate’s personal funds may reimburse those personal funds from political contributions in the amount of those expenditures only if the expenditures from personal funds were fully reported as political expenditures, including the payees, dates, purposes, and amounts of the expenditures, in the report required to be filed under this title that covers the period in which the expenditures from personal funds were made, and the report on which the expenditures from personal funds are disclosed clearly designates those expenditures as having been made from the person’s personal funds and that the expenditures are subject to reimbursement. *Id.* § 253.035(h).
24. Regarding the January 2010 semiannual report, the respondent disclosed six political expenditures totaling approximately \$4,050 that were alleged to have been made as reimbursements. Three of the six political expenditures totaling approximately \$785 were made directly to the respondent as reimbursements for political expenditures he previously made from his personal funds. However, the respondent did not disclose the

actual vendor payees in the original report, and the descriptions do not make clear who the ultimate vendors were. In addition, because the respondent did not properly report the political expenditures that he made from his personal funds, the respondent would not have been able to reimburse himself. Therefore, there is credible evidence of violations of section 253.035(h) of the Election Code with respect to those three reimbursements that were made to the respondent and credible evidence of violations of section 254.031(a)(3) of the Election Code with regard to the two expenditures that exceeded \$50. Regarding the remaining three political expenditures totaling \$1,020, the evidence indicated that the respondent made the payments directly to those individuals for contract labor and fundraising events not connected with the respondent's campaign. The recipients of the payments at issue were properly disclosed. Therefore, there is credible evidence of no violations of section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules with respect to those three expenditures.

25. Regarding the July 2011 semiannual report, the respondent disclosed six political expenditures totaling approximately \$1,225 that were made to six different individuals. The evidence indicated that the respondent made the payments directly to those individuals in their capacity as event coordinators and event hosts. The recipients of the payments at issue were properly disclosed. Therefore, there is credible evidence of no violations of section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules with respect to those expenditures.

Disclosure of Loans

26. Each campaign finance report must include the aggregate principal amount of all outstanding loans as of the last day of the reporting period. ELEC. CODE § 254.031(a)(2).
27. Each report by a candidate for a judicial office must include, for each outstanding loan to the person filing the report as of the last day of the reporting period, the full name and address of the person or financial institution making the loan, and the full name and address of each guarantor of the loan other than the candidate. *Id.* § 254.0611(a)(5).
28. With respect to the allegations that the respondent disclosed an incorrect amount of outstanding loans, the amounts disclosed on the respondent's July 2010 and January 2011 semiannual reports were incorrect by \$2,670 because the respondent added interest on the loan when calculating the total. In context, the errors were *de minimis*. Therefore, there is credible evidence of technical or *de minimis* violations of section 254.031(a)(2) of the Election Code with respect to those two reports. Regarding the July 2011 semiannual report, the respondent disclosed an incorrect amount of outstanding loans. The amount was incorrect by approximately \$15,460. Therefore, there is credible evidence of a violation of section 254.031(a)(2) of the Election Code with respect to that report.
29. With respect to the allegation that the respondent did not file a Schedule L with his January 2010 semiannual report, the respondent did not disclose the correct name of the lender when the report was originally filed. The respondent subsequently corrected the

report to list First National Bank as the lender. Therefore, there is credible evidence of a violation of sections 254.031(a)(2) and 254.0611(a)(5) of the Election Code.

V. Representations and Agreement by Respondent

By signing this order and agreed resolution and returning it to the commission:

1. The respondent neither admits nor denies the facts described under Section III or the commission's findings and conclusions of law described under Section IV, and consents to the entry of this order and agreed resolution solely for the purpose of resolving this sworn complaint.
2. The respondent consents to this order and agreed resolution and waives any right to further proceedings in this matter.
3. The respondent acknowledges that: 1) each campaign finance report must include the aggregate principal amount of all outstanding loans as of the last day of the reporting period; 2) each report by a candidate for a judicial office must include, for each outstanding loan to the person filing the report as of the last day of the reporting period, the full name and address of the person or financial institution making the loan, and the full name and address of each guarantor of the loan other than the candidate; 3) each report must include the amount of political expenditures that in the aggregate exceed \$100 (\$50 until September 28, 2011) and that are made during the reporting period, the full name and address of the persons to whom political expenditures are made, and the dates and purposes of the expenditures; 4) the purpose of an expenditure means a description of goods, services, or other thing of value and must include a brief statement or description of the candidate, officeholder, or political committee activity that is conducted by making the expenditure. The brief statement or description must include the item or service purchased and must be sufficiently specific, when considered within the context of the description of the category, to make the reason for the expenditure clear. Merely disclosing the category of goods, services, or other thing of value for which the expenditure is made does not adequately describe the purpose of an expenditure; 5) a candidate who makes political expenditures from the candidate's personal funds may reimburse those personal funds from political contributions in the amount of those expenditures only if the expenditures from personal funds were fully reported as political expenditures, including the payees, dates, purposes, and amounts of the expenditures, in the report required to be filed under this title that covers the period in which the expenditures from personal funds were made, and the report on which the expenditures from personal funds are disclosed clearly designates those expenditures as having been made from the person's personal funds and that the expenditures are subject to reimbursement; and 6) each report by a candidate for a judicial office must include, for each individual from whom the person filing the report has accepted political contributions that in the aggregate exceed \$50 and that are accepted during the reporting period, the principal occupation and job title of the individual and the full name of the employer of the individual or of the law firm of which the individual or the individual's

spouse is a member, if any. The respondent agrees to comply with these requirements of the law.

VI. Confidentiality

This order and agreed resolution describes violations that the commission has determined are neither technical nor *de minimis*. Accordingly, this order and agreed resolution is not confidential under section 571.140 of the Government Code and may be disclosed by members and staff of the commission.

VII. Sanction

After considering the violations described under Sections III and IV, including the nature, circumstances, and consequences of the violations, and after considering the sanction necessary to deter future violations, the commission imposes a \$500 civil penalty.

VIII. Order

The commission hereby orders that if the respondent consents to the proposed resolution, this order and agreed resolution is a final and complete resolution of SC-31112263.

AGREED to by the respondent on this _____ day of _____, 20____.

Ricardo Rodriguez, Jr., Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director